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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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03/11/2004

Xavier Blin

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22852

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06/09/2009

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER

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EXAMINER

HUGHES, ALICIA R

ART UNIT

PAPER NUMBER

1614

MAIL DATE

DELIVERY MODE

06/09/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/796,979

Applicant(s)

BLIN ET AL.

Examiner

ALICIA R. HUGHES

Art Unit

1614

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 and 44-56 is/are pending in the application.
- 4a) Of the above claim(s) 29-35 and 44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28, 36-41 and 45-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of the Claims and Examination

Claims 1-41 and 44-56 are pending. However, claims 29-35 and 44 are withdrawn from consideration as they are drawn to a non-elected invention. Claims 1-28, 36-41 and 45-56 are pending and the subject of this examination.

Applicants' arguments and information disclosures filed on 18 March 2009 have been fully considered but are not deemed to be unpersuasive regarding the previous rejection. Rejections not reiterated from this Office's previous action are hereby withdrawn. The rejections set forth herein constitute the complete set of rejections being applied to the instant application presently.

Claim Rejection – 35 U.S.C. §103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-28, 36-41, and 45-56 are rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent No. 6,342,527 B1 [hereinafter referred to as O'Lenick et al.]" in view of U.S. Patent No. 6,491,927 B1 [hereinafter referred to as "Arnaud et al."].

Applicant's traversal has been fully and carefully considered, but fails to be persuasive. The arguments of this Office's Actions of 05 May 2008, 01 November 2007, 14 February 2007 and 04 September 2008 are incorporated herein by reference in their entirety.

The Applicant argues that one of ordinary skill in the art would not have been motivated to combine the teachings of O'Lenick with that of Arnaud to arrive at the presently claimed invention. And further, that upon consideration of all of the facts, the combination of references does not render the present claims obvious. Additionally, Applicant argues that Arnaud does not remedy the deficiencies in O'Lenick, because it teaches away from the claimed oils recited in the independent claims, implying that some high weight molecular oils do not provide good sensory properties for the disclosed compositions therein. Applicant goes on to say that "one of ordinary skill in the art would necessarily have to pick and choose among the saturated and branched C₂₄-C₂₈ fatty alcohols or fatty acids disclosed in Arnaud." The Examiner disagrees.

Based on the most previous statement, Applicant admits that Arnaud does disclose the oils that are the subject matter of the instant invention. The statement of picking and choosing goes moreso to the breadth of the patent than to its teachings, which cannot be discounted as Applicant attempts here to do. The teaching of Arnaud et al on the face are presumed valid, because they are taught in an issued patent. That Applicant's rationale for combination is wholly

based on mere speculation and hindsight in view of the teachings in the present application is unpersuasive and appears as but an allegation that lacks persuasive factual support.

With regard to Applicant's reversal of the combination of references premised upon the belief that contrary to Examiner's assertion, there is a lack of overlapping subject matter because the effect of the unique gloss of the composition when applied to the skin present in O'Lenick et al is lacking in the composition of Arnaud et al, the same is not persuasive. While Applicant chooses to focus on the lack of this one element, the Examiner has focused instead her attention on the portion of the subject matter disclosed in both references that is the same and assigned it greater weight when evaluating prior art against the disclosures made of record by Applicant.

For these reasons made previously of record and in light of the foregoing, the rejection of claims 1-28, 36-41 and 45-56 remains proper and is maintained.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Hughes whose telephone number is 571-272-6026. The examiner can normally be reached from 9:00 AM to 5:00 PM, Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, can be reached at 571-272-0718. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Public PAIR only. For information about the PAIR system, see <http://pair-direct-uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alicia R. Hughes/
Examiner, Art Unit 1614

/Raymond J Henley III/
Primary Examiner, Art Unit 1614